IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2006

CORAM :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

WRIT PETITION Nos.38344 and 38345 of 2006

& MP.NOS.1,1,2 AND 2 OF 2006

M/s.Nexus Transcore Industries, Pondicherry
rep.by its Managing Partner

..Petitioner in
WP.No.38344/06

M/s.Nexus Translam Industries, Pondicherry
rep.by its Proprietor

..Petitioner in
WP.No.38345/06

Vs

1.Union of India, rep.by its Secretary
Ministry of Finance, Department of
Revenue, New Delhi.

2.The Commissioner of Customs &
Central Excise, Pondicherry.

3.Assistant Commissioner of Customs
Custom House, Pondicherry.

..Respondents 1 to 3
in both WPs

4.The Manager, Indusind Bank, NO.3,
Village Road, Nungambakkam,
Chennai-34.

..4th Respondent in
WP.NO.38344/06

5.The Manager, State Bank of Travancore
Chennai Main Branch, United Building
Esplanade, Chennai-108.

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6.The Manager, UTI Bank Ltd., 225
Anna Salai, Opp.Spencer Plaza
Chennai-2.

..5th and 6th Respondents in WP 38344/06 and r4 and 5 in WP 38345/06

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records relating to the orders passed by the third respondent in Orders in Original Nos.31 and 32/2006 A.C. dated 28.9.2006 and quash the same.

For Petitioners : Mr.Lakshmi Kumaran in both
For Respondents 1 to 3 : Mr.P.Wilson, Addl. Solicitor General of India in both

O R D E R

By consent, the writ petitions are taken up for final disposal.

2. The case of the petitioners is that they filed 13 and 10 bills of entry respectively for clearance of imported second/defective CRGO electrical steel strip cutting in irregular shapes and sizes through Pondicherry Inland Container Depot and declared the value of the goods at USD 350 per MT. The said bills of entry were assessed provisionally determining the value at USD 485 per MT on the basis of the contemporaneous import price prevailing during the material period and clearance was allowed on execution of necessary provisional duty bonds along with bank guarantees as securities towards the differential duty between the duty arising out of the declared value and provisionally determined value as agreed by both the petitioners and the Department. However, the orders in original were passed on 28.9.2006 by the third respondent non suiting the petitioners to the value reported by them. The value has been enhanced by USD 485 per MT as final assessable value.

3. Aggrieved against those orders, the petitioner have filed two appeals before the Commissioner of Central Excise (Appeals), Chennai. Along with the appeals, the petitioners have also filed applications for stay of recovery of the amounts as per the impugned orders. The reason for invoking the jurisdiction of this Court is that without passing any interim order or even disposing

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the main appeals, the differential amounts have been tried to be recovered from the petitioners.

4. Learned counsel for the petitioners submits that in respect of an identical import, earlier, the Department has taken a view as taken in this case, which was carried on appeal by one of the petitioners to the Commissioner of Customs (Appeals) and further appeal to the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Branch, Chennai. Ultimately, the Tribunal accepted the value as declared by one of the petitioners. Hence, in this case also, the petitioners are having 100% case in their favour. That being so, recovery of differential amounts by the respondents pending consideration of the appeals cannot be sustained.

5. I have heard the learned counsel for the petitioners and the learned Additional Solicitor General.

6. Admittedly, the appeals against the orders in original are pending before the Commissioner of Central Excise (Appeals), Chennai along with applications to stay the collection of differential amounts as submitted by the petitioners. It is the grievance of the petitioners now that without passing any orders either in the main appeals or in the stay applications, the bank guarantees given by the petitioners for the differential value, when the goods were cleared provisionally, are sought to be invoked, which is impermissible in law.

7. Having regard to the said facts, I am of the view that instead of admitting and keeping the writ petitions pending for years together, the same can be disposed of at the admission stage itself by directing the Commissioner of Central Excise (Appeals), Chennai to dispose of the stay applications one way or the other on merits or pass orders on the main appeals themselves.

8. Accordingly, the Commissioner of Central Excise (Appeals), Chennai is directed to dispose of the stay applications or the main appeals at an early date. Till such orders are passed either on the stay applications or on the main appeals, whichever is earlier, the bank guarantees furnished by the petitioners shall not be invoked. But, at the same time, the petitioners are directed to keep the bank guarantees alive till orders are passed by the Commissioner of Central Excise (Appeals), Chennai.

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9. The writ petitions are accordingly disposed of. No costs Consequently, the above MPS are dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Union of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Commissioner of Central Excise (Appeals) Chennai

3.The Commissioner of Customs & Central Excise, Pondicherry.
4. The Assistant Commissioner of Customs Custom House, Pondicherry

+2 cc to Lakshmi Kumaran, Advocate sr no. 50007 and 50008
+1 cc to Mr. P. Wilson, Advocate sr no. 49932

KSJ(CO)
NM(06.11.2006)

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of 2006 & MP.NOs.1,1,2
& 2 OF 2006

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